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AN APPRAISAL OF THE ENFORCEMENT AND JUDICIAL INTERPRETATION OF HUMAN RIGHTS PROVISIONS IN NIGERIA

Nlerum S. Okogbule*

Abstract
This article critically examines the enforcement architecture and judicial interpretation of human rights provisions under the Constitution of the Federal Republic of Nigeria. It interrogates the normative promise of Chapter IV against the practical realities of access to justice, institutional capacity, and compliance. While the Fundamental Rights (Enforcement Procedure) Rules 2009 were designed to liberalise standing and deepen rights protection, enforcement remains constrained by procedural technicalities, evidentiary burdens, and uneven judicial attitudes. The analysis evaluates key decisions of the Supreme Court of Nigeria to assess trends in interpretive approaches, including constitutional supremacy, locus standi, and the interface between domestic and international human rights norms. It argues that despite moments of progressive jurisprudence, structural and doctrinal limitations continue to dilute transformative potential. The article concludes by proposing doctrinal recalibration, institutional strengthening, and strategic litigation pathways to enhance the effectiveness of human rights adjudication in Nigeria.

Keywords*: Human Rights, Constitutional Rights, Judicial Interpretation*

Introduction

Judicial interpretation has long been the engine room of human-rights enforcement in Nigeria, especially given the obvious gaps between constitutional provisions and lived realities. The courts' approach to Chapter IV of the 1999 Constitution, which catalogues the fundamental human rights, has oscillated between strict textualism and more liberal, purposive reasoning. This tension was vividly illustrated in decisions such as ***Ransome-Kuti v Attorney-General of the Federation***,[1] where the Supreme Court underscored the centrality of fundamental rights to the constitutional order. Subsequent cases, most notably ***Fawehinmi v Abacha,***[2] reaffirmed the judiciary's responsibility to read domestic statutes in harmony with international human-rights norms. These interpretive choices draw on long-standing principles of statutory construction, including the presumption in favour of rights-consistent readings and the rejection of interpretations that undermine constitutional safeguards, as recognised in ***Bello v Attorney-General of Oyo State.***[3] Against this backdrop, the paper interrogates how Nigerian courts can cultivate a more coherent interpretive philosophy capable of deepening the protection of human dignity in an era of intensifying social, political, and environmental pressures.

*Professor of International Law and Vice-Chancellor, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt. E-mail: Nlerum.okogbule@ust.edu.ng; nlerumokogbule@yahoo.co.uk

[1] (1985) 2 NWLR (Pt 6) 211
[2] (2000) 6 NWLR (Pt 660) 228
[3] (1986) 5 NWLR (Pt 45) 828

Principle of Construction of Statutes

The primary duty of the courts in interpreting statutes is to find the intention of the legislature[4] , but the intention is to be discovered from the wording of the statute; it must be an intention manifested by the words used. If every word had only one meaning, this task would have been very easy. Words, however, have no meaning except in a context. Moreover, it must be appreciated that the lawmakers are human beings subject to human frailty. The draftsman cannot provide in clear terms for all social, economic and political contingencies that may arise in future in relation to the statute. The draftsman cannot foresee and provide for all future events and circumstances that may arise in relation to a particular subject matter being legislated upon. For instance, in the case of *Awolowo v Shagari*,[5] the question of the meaning of two-thirds of the 19 states nearly scuttled Nigeria's march to a democratic second republic. If the draftsman had foreseen the problem, he would have conveniently taken care of it in his draft.

Some words used in statutes represent such a vague standard that the task of interpreting them may be likened to that of making subsidiary legislation.[6] Examples of such words are 'reasonable time" and "inordinate delay". Generally, when the wording of a statute is clear, there is little problem of interpretation. However, sometimes, the wording may be clear, but giving effect to the clear meaning would lead to absurd results. It is the duty of the court to grapple with this problem, bearing in mind that the primary objective is to find the intention of the legislature. An ambiguous statute may be difficult to interpret. Yet it is the duty of the court to discover the intention of the legislature from the wording. The courts are not expected or entitled to fill gaps in statutes. Where there is a gap in a statute, it is only the Legislature that fills it by subsequent enactment.[7] The court is not to guess the intention of the legislature: they have to discover that intention.

A distinction has been drawn between the words "interpretation" and "construction". A learned writer has said that "although the court do not draw any distinction between these two words in the sense they use them, it would appear that to "interpret" is to declare simply what the word used in the instrument or document say, hence reference is often made of interpreting the statute or construction by assigning to the word used in the instrument or document their natural and ordinary meaning, their plan, literal meaning; the so called literal rule of interpretation.

On the other hand, 'construction' is often used when the words to be interpreted are ambiguous or incapable of clear interpretation, that is where the literal rule will be of no assistance, then the court, to ascertain the intention of the legislature can resort to broad, narrow or progressive interpretation or the preamble to the enactment or consider precedents from other jurisdictions.[8] It is, however,

[4] *Onasile v Sami* (1962) 1 ALL NLR 272.
[5] (1979) 6 7 SC
[6] D Payne, 'The Intention of the Legislature in the Interpretation of Statute (1956) 6 C.I.P. 96, 105.
[7] *Okumagba v Egbe* (1965) ALL NLR 62, 65.
[8] Douglas Payne (n 3).

often difficult to say where interpretation stops and construction begins; the distinction between the two words is definitely not clear-cut, and the court appears to use them interchangeably. However, given these remarks, the general common law[9] principle and the statutory rules applied by the court in interpreting statutes will now be examined. There are three main general principles of interpretation or construction, namely, the Literal rule, the Golden rule and the Mischief rules; they are not, in fact, they are mere guiding principles.

The Literal Rule

According to the Literal Rule, statutes are to be interpreted literally. Words used in statutes are thus to be construed in their usual grammatical sense. If the words are used in relation to a trade or business, they are to be given their usual meaning in the trade or business. It is immaterial that hardship would result from literal interpretation. A court cannot take upon itself the duty of altering or inserting words into an enactment to make it read in the manner it ought to be.

In ***Onah v Atenda,***[10] the Court of Appeal held that if the words of a statute are precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. In ***Idehen v Idehen,***[11] the Supreme Court held that the first and most elementary rule of construction is the literal rule. The advocates of the literal rule of interpretation believe that the legislature has said what it means and means what it said. The intention of the legislature must be ascertained through the medium of the words used.

The literal rule of interpretation was equally applied by the Supreme Court in the case of ***Chief Obafemi Awolowo v Alhaji Shagari***,[12] which arose from the presidential election of 1979. The Supreme Court was dealing with the meaning of the provision of Section 34 A (1) (C) (ii) of the Electoral Act 1977 (as amended).

The case of the Petitioner was that the declaration of the respondent by the Returning Officer as winner of the presidential election was a nullity since the respondent had not complied with the requirement of section 34 A (1) (C) (ii) of the Electoral Act instead of scoring over twenty-five percent of the votes cast in thirteen states, he scored that percentage only in twelve and two third states in the nineteen states of the federation of Nigeria. The election petition tribunal applying the literal rule of interpretation held that two-thirds of nineteen states are twelve two-thirds states. Petitioner's appeal to the Supreme Court was thus dismissed.

[9] The Common Law of England apples in all jurisdiction in Nigeria subject to Nigerian legislation.
[10] (2000) 5 NWI R (Pt. 656) 244 CA
[11] (1991) 6 NWI R (Pt. 198) 382
[12] (1980) 1 PLR 189 (1979) 6-9 S. C

In dismissing the appeal, Fatayi William C J N speaking for the majority of the Supreme Court, held that the words being construed were 'plain enough' and that there was no reason for doubting the intention of the legislature.

The literal rule of interpretation has been criticised on several grounds. *First*, it seeks to diminish or extinguish the creative role of the judge in the interpretation of a statute and thereby reduces the judge to a mere mechanical interpreter whose role is to give effect to the literal words of a statute at their face value.
Lastly, the literal rule of interpretation will reduce statute law to an arbitrary body of rules.

The Golden Rule

Where the application of the plain grammatical interpretation of a particular provision will produce absurd, inconsistent or ambiguous results, the court may instead assign the words a secondary meaning that they can bear.[13] The assumption is that the legislature could not have intended an absurd result. This modification of the literal rule is known as the Golden Rule of interpretation. In ***Becke v Smith***[14] Parke B posited thus:

> It is a very useful rule in the construction of statute to adhere to the ordinary meaning of the word used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to manifest absurdity or repugnance in which case the language may be varied or modified to avoid such inconvenience but no further"

The usual implication of the application of this rule is that words in the statute are ignored, or those not there are read into it. The court is always careful to ensure that where the words are plain and clear, they should bear their natural signification or import. Unless a contradiction or inconsistency would arise therein by reason of some subsequent clause from where it might be inferred that the intention of the lawmakers was otherwise.[15] Similarly, in ***Awolowo v Federal Minister of Internal Affairs,***[16] the Court had to interpret section 21 (5) (C) of the 1979 Constitution of the Federation[17] , which provided that an accused person is entitled to defend himself in person or by a legal representative of his choice. The Court held that under the provision, the legal representative chosen, if outside Nigeria, must be a person who could enter Nigeria as of right. The Supreme Court affirmed the judgment.[18] Finally, in applying the golden rule, the Courts sometimes construe the word 'or' as 'and' in such a way as to avoid absurdity.[19]

[13] *Okeke v AG Anambra State*
[14] (1836) 150 E R 724, 736
[15] *Machele v Torrup* (1766) Park 277
[16] (1962) LLR 177
[17] Nigerian Constitution Order in Council 1960 (S. 1 1960 No C652
[18] *Awolowa v Saki* (1966) 1NLR 178
[19] *Ejoh v IGP* (1963) ALL NLR 250

However, it must be emphasised that the primary object of the Court in adopting such a construction is to give effect to the intention of the legislature. Although the interpretation enactments contain a presumption that the word 'or' is to be construed as a disjunctive word, that presumption is subject to any contrary intention in that statute being interpreted.[20]

Mischief Rule

To interpret a statute properly, it is necessary to consider how the law stood when the statute to be construed was passed, what the mischief was, for which the old law did not provide, and the remedy provided by the statute to cure the mischief. [21] The Court is there to construe the statute in such a manner as to suppress the mischief and advance the remedy.[22]

The principle is applicable only where the meaning of the statutory provision is ambiguous; thus in ***Balogun v Salanu***[23] the Court considered the history of the Registration of Titles Act[24] and said that the ban attending dealing in family land was sale of such land by some members of the family followed by repudiation of the transaction by other members of the family on ground of absence of the family's consent. The Court held that the purpose of the Act was to remove the ban. It then interpreted the provision in light of the history.

Similarly, in ***I.B.W.A Ltd v Imno Ltd***[25] the Supreme Court held that the Court's duty is always to make such construction that will suppress the mischief and advance the remedy, but this will only arise if there is latent ambiguity in the word used in the statutory provision otherwise it is the literal rule that is the first and most elementary rule of construction that will apply if the words used in the statutory provision are in themselves precise and unambiguous.

The *Ejusdem Generis* Rule

Under this rule, where particular words are followed by general words, the general words are interpreted restrictively to have a meaning that is of the same kind of genus as the preceding ones already particularised. In the English case of ***Palmer v Snow***[26] The Court had to interpret the provision of the Sunday Observance Act, 1677, which prohibited the doing of certain acts on Sundays. The classes of people so prohibited were 'tradesmen', 'artificers', 'workmen', 'labourers' or any other person whatsoever, and the Court held that it should be limited to persons of the same genus as those expressly mentioned and could not include Farmer and Barber.

[20] See Interpretation Act 1964 (No 107, 1964) SST and 18
[21] *Re Mayfair Property Co* (1898) 2 Ch 28, 35, Cited with approval in *Balogun v Salami* (1963)1 ALL NLR 129.
[22] *Heydon's Case* (1584) 3 CO Rep 7a 76 E. R6 38, the Case in which the principle was formulated.
[23] (1963). AIL NIK 129
[24] Federal and Lagos Law 1958 Cap 181
[25] (1988)3 NWLR 643
[26] (1900) 1 Q.B. 725

The *ejusdem genesis* rule was applied by the English Court of Appeal in *Cole shill and District investment and Co Ltd V. Minister of Housing and Local Government and Anor*[27] where the Court held that in determining the meaning to be given to the phrase 'building, engineering, mining or other operation' in section 12 (1) of the Town and Country Planning Act 1947, the words "other operation" must be construed *ejusdem generis* with 'building', 'engineering' and 'mining'.

Outside the three major principles of interpretation, there are other minor rules of interpretation, which include the *ejusdem genus* rule, which is explained above. There are other minor rules of interpretation, such as *noscitor a socus rule,* Expression *unis est exclulsion alterus rule: Lex non cogit ad impossibila, ut res magis valcat quam perveat.*

Judicial Interpretation of Human Rights Norms Under the Present Democratic Government

It is often asserted that the judiciary is the last hope of the common man.[28] In the case of breach of a fundamental right, Section 46 (1) of the 1999 Constitution empowers the aggrieved person to seek legal redress. Section 6 (1) of the 1999 Constitution vests the judicial power of the federation and the state in the Court. It states thus:

> The judicial power of the Federation shall be vested in the court to which this section relates, being a Court established for the Federation.

Similarly, Section 6(6) (b) of the 1999 Constitution adds that.

> The judicial power vested in accordance with the foregoing provision of this section shall extend to all matters between persons, or between the Government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

The combined effect of Section 6 (1) and Subsection 6 (b) of the 1999 Constitution is that the court has the power to adjudicate on matters concerning any breach of fundamental rights as enshrined in the Constitution, and also, any individual whose rights have been infringed is empowered by the Constitution to seek legal redress in the Court.

It is noteworthy that Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria guarantees a number of fundamental rights. Cases abound where the Judiciary has made notable pronouncements on violations of human rights as contained in the Constitution. In this way, the courts have been able to avert further violation of these rights. The court has adjudicated matters

[27] (1968) W. L. R 600, 6058
[28] IO Igwe and NC Reginald, 'Court, the Last Hope of the Common Man: A Legal Expository of the Reality or Myth' *Nnamdi Azikiwe University Journal of Law and Clinical Legal Education* (2025) 2 (1) 25.

of breach of the right to life as contained in Section 33 of the 1999 Constitution. In the case of ***Bello and Ors. The Attorney General of Oyo State***[29] stated that the deceased had been convicted of armed robbery and sentenced to death. He filed a notice of appeal, but before the hearing of the appeal, the Oyo State Government had him executed. His relative brought an action against the State Government in tort claiming damages for wrongful and premature termination of the life of their relation. The Supreme Court held that the unlawful termination of the life of the appellant before his appeal was heard was a contravention of Section 30(1) 220 (1) and 213 (1) of the 1999 Constitution. Section 34 of the 1999 Constitution, which deals with the right to the dignity of a human person. The Courts have also made a lot of pronouncements to curtail further breaches. thus, in Alaboh v Boyles and Anor,30 the beating, pushing and submersion of the applicant's head in a pool of water by the first respondent was held to constitute inhuman and degrading treatment on the right to fair hearing, the Supreme Court in Udofia v State30 held that a fair hearing was denied when an accused was represented improperly, ineffectively, and half-heartedly.

Oputa, JSC declared, 'What is the country turning into when members of the NYSC will be sent to court to defend a man on trial for his life?' However, in Nafiu Rabiu v The State,30 it was contended before the 'Supreme Court that proceedings on appeal against the acquittal of an accused infringed Section 33 (9) of the 1999 Constitution. The Supreme Court held that the subsection was not infringed since the subsection contemplates the trial of an accused by a court of first instance. The constitutional provisions and cases discussed above showed the manner and ways through which the judiciary controls and protects human rights norms in the Nigerian policy.

Judicial Attitude to Enforcement of Fundamental Rights

A victim of human rights abuse or infringement of fundamental rights must act timeously. Computation of the time of alleged infringement is of essence in the application for the enforcement of fundamental rights under the rules hence, leave shall not be granted to apply for an order unless the application is made within twelve months from the date of the happening of the event, matter or act complained of, or such other period as may be prescribed by the enactment.

However, an application brought outside the twelve months or such other period as may be prescribed by any enactment may be entertained if the applicant, with cogent and convincing reasons, accounts for the delay to the satisfaction of the appropriate court. Furthermore, as held in the case of Aoko v Fagbemi,31 the court does not allow technicalities to defeat an application for the enforcement of fundamental rights.

[29] A Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Brothers Limited 1987).
[30] (1981) 2 NCLR
[31] (1961) 1 ALL NLR 400

It is, however, important to note that the high court is conferred with special jurisdiction to enforce these rights. Under Section 46 (1) of the 1999 Constitution, it is provided that any person who alleges that any of the fundamental rights has been, is being, or is likely to be contravened in any state in relation to him may apply to the high court of the state of the alleged violation or infringement for redress. Where a federal high court exists within the state, both have concurrent jurisdiction in matters relating to fundamental rights.[32] The court can make an appropriate order or use any of the prerogative writs of Habeas corpus, mandamus, certiorari or prohibition and its powers of contempt where the fundamental rights of an individual are violated. It must also resort to injunctions and declaratory judgments.

Thus, only the state high court and federal high court have original jurisdiction in matters of redress for violation of fundamental rights. In the case of Peter Nemi and Ors v The State,[33] the Supreme Court of Nigeria decided that because the Constitution expressly confers original jurisdiction for the enforcement of fundamental rights on the high court, the Supreme Court has no jurisdiction as a court of first instance over them.

Legal Remedies for the Enforcement of Human Rights in Nigeria

Writ of Habeas Corpus

Habeas corpus is a Latin phrase, which literally means to 'have the body'. This remedy is like an order calling upon the authority that has placed a person under detention to produce such person before the court. The essence is to inform the court on what ground the person is being detained, and for the court to order the immediate release of a person detained in the absence of any legal justification for the detention. Habeas corpus, therefore, is an order of a court directing anybody or body (most often the police) to produce before the court any person who is being detained unlawfully. The onus will then be on the detaining authority so directed to produce to the court the person so detained and show to the satisfaction of the court the justification of such detention. Where the court is satisfied that the person is validly detained and that the detention is justified under the law, the court does not interfere.

On the other hand, if the court believes that there is no legal justification for the detention of such a person, the court will make an order directing the immediate release of the detainees. In the case of Green v Home Secretary,[34] Lord Wright said

> The incalculable value of Habeas corpus is that it enables the immediate determination of the right of the appellant to freedom.

[32] See *Turkur v Government of Gongola State* (1989) 4 NNLR (Pt 117) SC. 517-554
[33] (1994) 10.S.C N JL 20
[34] (1942) AC 284, 302

The importance of *habeas corpus* as a constitutional remedy is that its focus is on the release and deterrence, and not intended to punish the detaining authority, nor is it meant to limit the power of arrest and detention granted to the police. It follows that where a person is lawfully being detained, the order of *habeas corpus* will not be issued. It must be noted that there are many forms of habeas corpus which could be issued in any particular case, depending on the circumstances of each case.[35]

In the case of ***Gwaram v Superintendent of Prisons,***[36] it was held that if a court is not a court of competent jurisdiction, its conviction is illegal and so is any sentence which follows that conviction, and therefore an order of Habeas corpus can lie against the Superintendent of Prisons, for the release of the prisoner under their custody.

In ***Agbaje's Case***[37] the detention of the Applicant by the Inspector General of Police under Decree 24 of 1967 was declared illegal, null and void.

According to Aguda J, the detention of the applicant was illegal because the Inspector General's power to detain under the decree was exercisable only if he was satisfied that the detainee was involved with acts prejudicial to the public order, but in this case, the detention order merely stated that the applicant was detained in the interest of the Federation of Nigeria.

Secondly, while the detention order stated that the applicant should be detained in a civil prison, he was, on the contrary, detained at a Police Station. The learned judge held the detention orders unlawful, and the applicant was entitled to be released under these orders.

Certiorari

Certiorari literally means to certify. It is the most effective remedy available to a citizen or a person adversely affected by a decision or action of an administrative authority. It may be defined as a judicial order directed by a superior court to any constitutional, statutory or non-statutory body requiring the records of action of such body to be challenged. The essence is for the superior court to satisfy itself on the justness of the records of such inferior court, body or tribunal.

Historically, *certiorari*, like other writs, was a writ brought by the King in England against his officers to compel them to exercise their functions properly. Certiorari is similar to an appeal only to the extent that, where granted, it results in the quashing or setting aside of the decision of the agency or body whose actions are being challenged.

[35] These include *habeas corpus ad testicandum, as respondemn, ad satifactedum* and *ad subjiciudum.*
[36] (1960) NRNI.R 6; See also *Re: Olayori & 2 Ors* (1969) 2 A.N.L.R 298
[37] *Agbaje v COP* (1969) I. N.N.L.R 137.

On the other hand, certiorari differs from an appeal in the sense that it is a discretionary order which the court is not bound to grant even if there is sufficient ground for its issuance.

Second, where the court grants the order, such court does not by so doing substitute its decision for that of the body or inferior court or tribunal; the court rather refers the matter back to the inferior court, body or tribunal to reconsider and determine afresh. The purport of the writ of certiorari is not only to see that the inferior court keeps within its jurisdiction, but also to see that they observe the law. In ***Re Umuolu Village Group Court,***[38] the applicants who were not willing to be tried and refused to give evidence were each sentenced to a fine of three Naira (₦3.00) or 3 months in default by the native court for conduct likely to cause breach of the peace, applied for *certiorari*. They contended that the three months in default were more than the jurisdiction of the Court in view of Section 10 (a) of the Native Court Ordinance, which provided for one month imprisonment as the maximum of the offence. The court held that the applicant, having not conducted themselves in such manner as to disentitle them to relief, and the time for appeal having passed, they were entitled to apply for certiorari to quash the proceeding as the Native Court had acted in excess of jurisdiction.

The requirement that *certiorari* can be issued only when the action is judicial or *quasi-judicial* is no longer valid. *Certiorari* can be issued to quash actions which are administrative in nature.[39] As the court observed in the case of ***The Queen v The Minister of Education Ex-Parte Augus,***[40] what must be considered is not the character of the body performing the act, but the nature of the duty which that body was carrying out.

In ***R v Electricity Co. Ltd***.,[41] Lord Atkin laid down the test for the exercise of the writ of *certiorari* by a court of law. The learned Judge observed;

> 'whenever anybody of persons having legal authority to determine a question affecting the rights of the subject acts in excess of legal authority, they are subject to the following jurisdiction of the King's Bench Division exercised in these writs'

It can therefore be said that the following conditions call for the grant of certiorari, namely: lack of jurisdiction, excess of jurisdiction, abuse of jurisdiction, violation of the principles of natural justice and error of law.

Mandamus

Mandamus implies an order. It means an order or command by which the high court compels a public authority (i.e. inferior court, tribunal or other body of persons) to perform a public duty

[38] (1953) 2 ABLE III
[39] See the case of *Ak Kraipak v Union of India* (1960) AIR 211, 200 which the writ of certiorari was issued to quash the action of a selection board.
[40] (1964) W N. I. R 27, 30
[41] (1924) I. K. 171, 205.

vested in such public authority. It has been described as a positive prerogative order because, where appropriate, it issues to compel such authority against whom it is directed to take positive steps to discharge its duty as required by law.

Such a duty may be imposed by a constitution or statute. It may also be a duty created or imposed by customary law, ordinary custom or contract. Mandamus is today comparable to a mandatory injunction. It lies against a person or body, public or private, provided the person or body is under a legal duty to act. It therefore lies against the Government department, the inferior court and tribunal, statutory bodies and indeed any person having a public duty to perform under any law, statutory or customary.

The duty must be owed to the public or to the person applying for this order. In other words, *mandamus* cannot be issued at the instance of a person to compel the performance of a duty owed to another person. An order of *mandamus* can be issued if the following conditions are satisfied.

The petitioner must have a legal right - Like any other discretionary remedy, an applicant for the order of *mandamus* must establish a private or special right or damage either under common law, administrative or constitutional law that the applicant has *locus standi* in a matter only if he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected.

A Legally Mandatory duty must be imposed on the authority:
Mandamus can only be issued if the legal authority has a mandatory duty or responsibility, not a discretionary or optional one. A duty to be performed at the discretion of the authority does not confer any right to compel performance. The duty may be statutorily imposed by either a common law, statute or the Constitution.

Refusal or neglect of performance: The authority imposed with the mandatory public duty must fail, refuse or neglect to perform. A petitioner for the order of *mandamus* must prove that the authority imposed with the duty has failed, neglected or refused to carry out the public duty, Where the authority abuses the power, or exceeds it, or act *malafide*, or where there is non application of mind or where irrelevant consideration are considered, then the order of mandamus will lie to compel proper performance. This position was lucidly stated in Halsbury's Laws of England.[42]

> As a general rule, the order will not be granted unless the party complained of knew what it was required to do to consider whether or not it should comply, and must

[42] Vol 13 106.

> be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that the demand was met by a refusal.

In ***The King v Assessment Committee of City of London Union,*** [43] the Court declared that for mandamus to be issued, it must be proved that a request for performance has been made without effect, that is, that the authority in which the power is vested has turned down a request for him to act or to execute the power. In ***A.G Anambra State v Nwobodo,***[44] the respondent applied for the order of mandamus to compel the appellant to endorse a certificate to the effect that he had seen information and refused to prosecute.

Appellant had stated earlier that there was no *prima facie* evidence in a case where the deceased was attacked by the accused person and found dead in a bush the next day. The High Court disagreed with him. On appeal against the High Court order of mandamus, the Court of Appeal held that if the Attorney General fails to act or exercise his discretion one way or the other, the court can, by an order of mandamus, compel him to perform his statutory duty.

Declaration

A declaratory order or judgment declares the state of law or fact without any more. In an application for declaration, the applicant simply prays that the court determine a particular issue or question. It amounts to a pronouncement of the court on a particular contention. The declaratory remedy or order is often used to test the validity or legality of delegated legislation. Sometimes, the *ultra vires* or *intra vires* exercise of public power by authorities is reviewed by an application for a declaration.

In ***William v Home Office (No. 2)***[45] , following the decision of the court that no declaration can be granted unless the remedy is of real value, it was held that a court should not grant declaration which are academic and of no practical value. The use of declarations in private and public law jurisprudence has become popular in the modern dispensation of justice.

Besides, declaratory orders and judgments are less coercive and disruptive than other remedies that involve tedious litigation and proceedings. For purposes of maintaining cordial relationships and a more friendly atmosphere in contentious issues, a declaration is preferable. Unlike coercive orders, which compel the doing or restraint in the doing of a particular act, a declaration merely states the obvious fact, the state of law or the exact relationship between the parties before the court. A declaratory judgment, rather than commanding the doing or not doing of something, merely declares the rights, duties and powers of parties or authorities to a matter in dispute.

[43] (1907) 2 K B 764
[44] (1992) 7 NWLR (PT 256) - 711
[45] (1981) I ALLER 1211

Although declaratory orders lack the mandatory character of the other coercive orders, it has its potency and efficacy, as no public authority that is responsive to public opinion would deliberately ignore or disregard an authoritative judicial pronouncement on the limits of its powers.

In ***William v Majekundunmi,***[46] a restrictive order confining the applicant within a certain radius of the city of Abeokuta was declared illegal and not justifiable in a democratic society.
Similarly, the deportation of the plaintiff (a Nigerian) from Nigeria on the allegation that he was an alien was declared an unlawful exercise of public power.[47]

Similarly, in ***Olaniyan v University of Lagos***.[48] It was held that where an employer removes an employee without following the statutory procedure for such removal, the concerned employee can seek a declaratory judgment declaring the purported removal null and void.

Prohibition

The writ of prohibition is usually issued to prohibit an inferior court or tribunal from adjudicating on a dispute on the ground of violation of the rule of procedure or rules of natural justice. The writ of prohibition can also be issued by a superior court to prohibit an inferior court from adjudicating on a dispute on the ground that it has no jurisdiction or that the condition precedent to the assumption of jurisdiction has not been fulfilled. For instance, Order 43 Rule 1 of the High Court Rules of Oyo State makes adequate provision for the issue and grant of a writ of prohibition. A writ of prohibition can be issued by a Superior court to prohibit an inferior court or tribunal from adjudicating on any issue on the ground of bias.[49] , where the Legal Practitioners Disciplinary Committee was prohibited from trying the applicant on the allegation of professional misconduct on the ground that the Legal Practitioners' Disciplinary Committee was biased against the applicant.

Similarly, in ***Okoye v Lagos State Government,***[50] the respondent was prohibited from destroying the property of the applicant on the ground that the architect of the respondent endorsed the building plan of the applicant and, under the Town Planning Law, the building plan is deemed approved. The Court of Appeal rejected the contention that the act of the respondent is ministerial, and it held that the respondent must act judicially. Any party to be affected by the order of prohibition must be served, and where an interested party is not served, the proceeding will be a nullity.

[46] (1962) ALL NLR 413
[47] *Shugaba Garman v Minister Internal Affairs* (1981) I NCLR 459
[48] (1982) 2 NWLR
[49] (1985) 7 SC (Pt. 1) 178
[50] (1990) 3 NWLR (Pt.136) 115

Challenges of Interpretation and Enforcement of Human Rights Norms

Now that Nigeria has started enjoying democratic rule, it is submitted that any legislation which alters the jurisdiction of the court is a clear violation of the provision of section 6 of the 1999 Constitution. Such legislation is null and void and of no effect whatsoever. It is illegal and unconstitutional.

Executive Lawlessness and Disobedience of Court Order and Judgement

The primary function of the judiciary is to determine disputes between private persons, between private persons and the government or a public authority or between Government departments or different levels of Government, such as between states or a state and the federal government. ***A.G Abia State and 36 Ors. v. A. G. Federation***,[51] The judiciary is therefore to act as a check and balance on all executive and legislative action. The Judiciary has a sacred duty to ensure that Government is conducted according to law and to ensure the observance of the rule of law. The executive and the legislature should be bound by judicial decisions.

The duty of enforcing judicial decision lie with the executive. The executive may become belligerent, hostile or antagonistic, thereby refusing to obey or carry out the legitimate decision or orders of the court. The executive may then resort to a self-help remedy or refuse, neglect or fail to give effect to such unfavourable decisions. It is a common experience that the police, armed forces or other law enforcement agents refuse or deliberately delay obeying court orders directed at them to produce or release persons or property detained by them. The famous case of the ***Governor of Lagos State v Ojukwu***[52] amply illustrates executive lawlessness. In that case, the executive treated the court order with utter contempt and proceeded to do what it liked. The Supreme Court strongly deprecated the Lagos State Government for executive lawlessness and emphasised that respect for law and judicial decision is the lifeline of any political order.

To the extent that the executive will be prepared to take the law into their hands and treat decisions of the court with utter contempt and levity, the entrenched rights will be of limited relevance and shackled. It must be emphasised that disobedience to court orders by an individual or government, or government agency, is an open invitation to chaos and anarchy. Above all, it is the most uncivilised conduct. A party that fails to obey court orders not only shows disrespect to the court but has, by its conduct, shown complete violation of the cherished provisions of the Constitution and the rule of law. The fundamental right will be better enjoyed when the executive begins to treat judgments or orders of the court with the deserved respect and dispatch. The judiciary must rise up to the challenge of ensuing obedience to its order by using its power of committal for contempt in appropriate cases.

[51] (2002) 6 NWLR (Pt. 763) 204. See also *Legal Practitioner Disciplinary Committee v Fawehinmi* (1982) I ALL NLR 324
[52] (1986) I N SLR (Pt 8) 621

Conclusion

This paper has demonstrated the significance of the interpretative and enforcement roles of the judiciary in relation to human rights instruments. It is in consideration of these issues that we strongly advocate that Nigeria should seize the opportunity offered by the current effort at constitutional amendment to create a human rights court. This will broaden the pathway of citizens to justice as well as enhance the interpretation and enforcement of human rights norms in the country.

To be sure, Nigeria cannot afford to continue to pay lip service to observance and enforcement of human rights, and the establishment of such a court will go a long way in fulfilling the vital role of the courts in the enforcement of citizens' rights in the country.

Lord Denning wildly defined the English conception of the function of the courts of law when he stood in. We regard them as standing between the individual and the staee protecting the individual from interference with his freedom, which is not justified by the law. This should represent the Nigerian notion of the court of law. In Nigeria, the judicial power of the federation is vested in the courts. The judiciary is the ultimate protector of the Constitution and defender of the masses against oppression. Access to court is therefore a prerequisite for meaningful observance of the rule of law, human rights and fundamental freedoms. It is indeed a fundamental right to have unhindered access to the court. Notwithstanding the inherent systemic challenges, the courts remain the greatest medium for ensuring the enforcement of human rights in any democratic society.

The National Human Rights Commission should also rise to the occasion and become a more reliable institution for championing efforts at human rights enforcement. It is therefore recommended that the enabling law of the commission should be amended so as to make it independent and more effective. The independence of the judiciary must be ensured, making the judiciary self-accounting and properly positioned to manage its financial allocation.

The acceptance of an international responsibility to promote respect for human rights should go with the responsibility for the enforcement of the same. Most nations are unwilling to contemplate enforcement action even in the case of the most flagrant and glaring violations of human rights. The rule of law presupposes, among other things, that government should respect the rights of individual citizens under the rule of law.

It bears re-emphasising that the fundamental rights of citizens must be respected and enforced since these rights have become part of our legal culture and our inalienable and inherent rights, not the gift of any government. They cannot be taken away from the citizens. The courts should be given the enablement through their interpretation and enforcement powers to ensure the protection of human rights in the country.